

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

Plaintiff,

v.

HON. RICARDO ANTONIO ROSSELLÓ
NEVARES² and THE PUERTO RICO FISCAL
AGENCY AND FINANCIAL ADVISORY
AUTHORITY,

Defendants.

Adv. Pro. No. 19-00393-LTS

**DEFENDANTS' REPLY IN SUPPORT OF OPPOSED URGENT MOTION
REGARDING FURTHER ADJOURNMENT OF HEARING ON MOTION TO DISMISS**

To the Honorable United States District Judge Laura Taylor Swain:

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the "Commonwealth") (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

² Pursuant to Federal Rule of Civil Procedure 25(d), made applicable hereto by Federal Rule of Bankruptcy Procedure 7025, which are applicable to the Title III Cases and to the captioned adversary proceeding under 48 U.S.C. § 2161, Hon. Wanda Vázquez Garced should be automatically substituted for Hon. Ricardo Antonio Rosselló Nevares, because Governor Rosselló has resigned from his position as Governor of the Commonwealth of Puerto Rico and Hon. Wanda Vázquez Garced has assumed that role.

The Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”) and Governor Wanda Vázquez Garced³ (together, the “Defendants”) respectfully submit this reply (the “Reply”) to *The Financial Oversight and Management Board for Puerto Rico’s Opposition to Defendant’s Opposed Urgent Motion Regarding Further Adjournment of Hearing on Motion to Dismiss* [ECF No. 58] (the “Opposition”) filed by the Financial Oversight and Management Board for Puerto Rico (the “Board”) and in further support of the *Opposed Urgent Motion Regarding Further Adjournment of Hearing on Motion to Dismiss* (the “Urgent Motion”) [ECF No. 54].⁴ In support of the Reply, Defendants state as follows:

As this Court and the Board are aware, the government of Puerto Rico (the “Government”), including the Defendants in this adversary proceeding, has been in the process of a significant transition since the initial scheduled Hearing on Defendants’ Motion to Dismiss. This transition and the need for the relief requested in the Urgent Motion is not a situation of Defendants’ making and Defendants are taking this adversary proceeding seriously, as is appropriate. The Board has pointed to critical issues of statutory interpretation and the balance of powers between the Board and the elected Government that are important both with respect to Act 29, which affects pension and municipality issues, and larger issues related to the proper interpretation and application of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”).

Throughout the Government’s recent transition, Defendants have made good faith efforts to advise the Board of the urgent need for the new executive director of AAFAF and Governor Vázquez to have the opportunity to meaningfully confer and evaluate Act 29 and the processes set

³ Pursuant to Federal Rule of Civil Procedure 25(d), made applicable hereto by Federal Rule of Bankruptcy Procedure 7025, which are applicable to the Title III Cases and to the captioned adversary proceeding under 48 U.S.C. § 2161, Hon. Wanda Vázquez Garced should be automatically substituted for Hon. Ricardo Antonio Rosselló Nevares, because Governor Rosselló has resigned from his position as Governor of the Commonwealth of Puerto Rico and Hon. Wanda Vázquez Garced has assumed that role.

⁴ Capitalized terms used herein but not defined shall have the meanings given to them in the Urgent Motion.

forth under section 204 of PROMESA. [See ECF No. 50, ¶ 9; Urgent Mot., ¶ 11.] Yet, despite the fact that there is no financial emergency caused to the Commonwealth by Act 29 right now, the Board opposes Defendants' legitimate request for sufficient time for Governor Vázquez to evaluate the Board's serious allegations regarding Act 29 and alleged Government "policies" and to, together with AAFAF, set an appropriate course for how this litigation is defended or otherwise resolved.

The Board's Opposition seeks to force the Government to choose between a short adjournment whereby the Government "collect[s] and holds pension moneys required prior to Law 29 and . . . stop[s] implementing the Joint Resolutions," or no adjournment at all. [See Opp. at 3.] Per the Court's order issued this morning (the "August 14 Order") [ECF No. 59], the parties have had multiple discussions with each other over the Board's proposed conditions. Defendants cannot accede to them, particularly in light of the potential consequences for municipalities that an immediate cessation of receiving funding from CRIM would have on them. [See ECF No. 56 (Asociación de Alcaldes de Puerto Rico's *Motion to Request Intervention or, In the Alternative, to be Heard as Amicus Curiae*).] Further, Defendants note that if the Court permits an adjournment as Defendants request, the Board's tools under section 203 of PROMESA to deal with spending issues are unaffected.

In sum, it is extremely important that Governor Vázquez have adequate time to decide how to deal with these issues instead of making a forced decision that could have reverberating effects throughout the Island. Irrespective of the hearing date, the Government will continue meeting its obligations to comply with its pension payment obligations to retirees set forth in the certified fiscal plan for the Commonwealth (Compl., Ex. 3 [ECF. No. 1]), which flows from the requirement

under section 201(b)(1)(C) of PROMESA that the fiscal plan provide adequate funding for public pension systems.

For the reasons stated herein, Defendants respectfully request that the Urgent Motion be granted.

Certification in Compliance with the Court's August 14 Order

Pursuant to the August 14 Order, counsel to Defendants hereby certify that they met and conferred in good-faith with the Board concerning the Board's request for a stay of the enforcement of Law 29 and the Joint Resolutions, and the sequestration of the funds in question, pending determination of the Motion to Dismiss, and made reasonable, good-faith communications in an effort to resolve or narrow the issues that are being brought to the Court. For the reasons stated herein, Defendants cannot agree to condition a further adjournment on such stay and sequestration.

[Remainder of page intentionally left blank.]

Dated: August 14, 2019

San Juan, Puerto Rico

Respectfully submitted,

/s/ Peter Friedman

John J. Rapisardi
William J. Sushon
(Admitted *Pro Hac Vice*)
O'MELVENY & MYERS LLP
7 Times Square
New York, New York 10036
Tel: (212) 326-2000
Fax: (212) 326-2061

-and-

Peter Friedman
(Admitted *Pro Hac Vice*)
1625 Eye Street, NW
Washington, D.C. 20006
Tel: (202) 383-5300
Fax: (202) 383-5414

-and-

Elizabeth L. McKeen
(Admitted *Pro Hac Vice*)
610 Newport Center Drive, 17th Floor
Newport Beach, California 92660
Tel: (949) 823-6900
Fax: (949) 823-6994

Attorneys for Defendants

/s/ Luis C. Marini-Biaggi

Luis C. Marini-Biaggi
USDC No. 222301
Email: lmarini@mpmlawpr.com

Carolina Velaz-Rivero
USDC No. 300913
E:mail: cvelaz@mpmlawpr.com

MARINI PIETRANTONI MUÑIZ LLC
250 Ponce de León Ave., Suite 900
San Juan, Puerto Rico 00918
Tel: (787) 705-2171
Fax: (787) 936-7494

Co-attorneys for Defendants